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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/612,475 | 07/02/2003 | Charles Peter deCler | 1945.185US01 | 3132 |
| 23552 | 7590 | 03/03/2005 | EXAMINER | |
| MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903 | | | DUNWOODY, AARON M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3679 | |

DATE MAILED: 03/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|------------------------------|------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/612,475 | DECLER ET AL. |
| | Examiner Aaron M Dunwoody | Art Unit 3679 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 December 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 11-15 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 and 16-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/24/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US patent 4963201, Carstens.

In regards to claim 1, Carstens discloses a coupler device for fluid transport, comprising:

a body (32) including an outer surface being a circumferential outer sidewall, the outer sidewall having a first end and a second end with an opening extending through the first and second ends, the body defining a slot disposed proximate one of the first end or second end, the slot extending in a direction transverse to the opening and through the outer sidewall;

a latch assembly (92, 90) including at least one outer member being disposed on the body externally exposed of the outer surface and connected with an inner member being disposed through the slot, the outer member protruding from the outer surface and reciprocates with respect to the outer sidewall, the inner member reciprocates within the slot and having an aperture corresponding with the opening, whereby the body being releasably connectable with a piece of fluid transport equipment through the inner member; and

an overmold portion (14) formed about the outer sidewall of the body, the overmold portion defining a material molded over the body as an addition layer, such that the overmold portion is formed substantially about the outer sidewall, the overmold portion including a shroud portion partially covering the outer member of the latch assembly, the shroud portion being a protruded structure extending outward from the outer sidewall.

Note, a comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. In re Fessman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the overmold portion defining a material molded over the body is given little patentable weight.

In regards claim 2, Carstens discloses the body including a connection means disposed at one of the first or second ends opposite the slot, whereby the connection means being connectable to a fluid transport system.

In regards claim 3, Carstens discloses the connection means being a groove residing between the outer sidewall and the opening, the groove being a socket fitting.

In regards claim 4, Carstens discloses a part of the outer surface of the body having a recessed face disposed about the slot and extending in a direction along the outer surface toward the first and second ends.

In regards claim 5, Carstens discloses the recessed face being substantially planar, the recessed face being engageable with a portion of the outer member, the portion reciprocates with respect to the recessed face and over the slot.

In regards claim 6, Carstens discloses the opening of the body substantially being radially symmetrical.

In regards claim 7, Carstens discloses the body is constructed of a molded material, the molded material being more rigid than the overmold portion.

In regards claim 8, Carstens discloses the outer member of the latch assembly including an actuating member, a biasing member and a retaining member, the actuating member and the retaining member being connected at oppositely disposed ends of the inner member and outside the slot, and the biasing member being between the actuating member and the inner member, the biasing member being disposed on the outer surface over the slot and enabling the actuating member and retaining member to reciprocate with respect to the outer surface.

In regards claim 9, Carstens discloses the shroud portion of the overmold portion being a wall adjacent and around the outer member of the latch assembly, the wall extending in a direction transverse to the outer surface.

In regards claim 10, Carstens discloses the wall protrudes a distance being at least the same as a distance the outer member protrudes from the outer surface.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carstens.

In regards to claim 16-19, Carstens discloses the claimed invention except for the body being a rigid plastic material wherein the material is polypropylene, and the overmold portion being a low tolerance material wherein the material is a soft thermoplastic rubber material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to fabricate the body with a rigid plastic material wherein the material is polypropylene, and fabricate the overmold portion with a low tolerance material wherein the material is a soft thermoplastic rubber material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Response to Arguments

Applicant's arguments filed 12/4/2004 have been fully considered but they are not persuasive. The Applicant argues that Carstens does not teach the overmold portion defining a material molded over the body as an addition layer, such that the overmold portion is formed substantially about the outer sidewall. The Examiner disagrees. A

comparison of the recited process with the prior art processes does NOT serve to resolve the issue concerning patentability of the product. In re Fessman, 489 F2d 742, 180 U.S.P.Q. 324 (CCPA 1974). Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. In re Klug, 333 F2d 905, 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claims are not construed as being limited to the product formed by the specific process recited. In re Hirao et al., 535 F2d 67, 190 U.S.P.Q. 15, see footnote 3 (CCPA 1976). Therefore, the overmold portion defining a material molded over the body is given little patentable weight.

Further, the illustrations of Carstens clearly show the overmold portion defining a material over the body as an addition layer, such that the overmold portion is formed substantially about the outer sidewall.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron M Dunwoody whose telephone number is 703-306-3436. The examiner can normally be reached on 7:30 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P Stodola can be reached on 703-306-5771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Aaron M Dunwoody
Examiner
Art Unit 3679

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